IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

CHAIL SINGH VS. JUDGE,LABOUR COURT, JODHPUR & ORS.

(S.B.C.Writ Petition No.2395/03)

Date of order :- 15th December,2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.Vinod Purohit, Advoate for the petitioner.
Mr. Rameshwar Dave, Dy.Government Advocate.

REPORTABLE

This writ petition has been filed by the petitioner against the award dated 4.3.2003 passed by the learned Labour Court thereby answering the reference made to it by the appropriate government in the terms that the petitioner workman failed to prove that he was removed from service of the respondent management on 1.12.1990 or that he worked with them upto 30.11.1991. The learned Labour Court in the circumstances therefore declined to grant any relief to the petitioner.

The case of the petitioner before the learned Labour Court was that the appropriate government while making reference

to the Labour Court required it to determine and answer as to whether removal of the petitioner from the service of the respondents on 1.12.1990 was legal and valid and if not what relief was he entitled to. However the petitioner submitted his statement of claim wherein he asserted that he was appointed by the respondent no. 2 on 16.7.1984 and was working continuously for six years. He worked in Bhinmal range up to 30.11.1991 under respondent no. 3 and was being paid salary on muster rolls basis. In the terms of the reference made by the appropriate government, the date of termination of the petitioner from service was indicated as 1.12.1990 but due to typographical error in the statement of claim the date upto which the petitioner worked under respondent no.3 came to be typed as 30.11.1991 instead of 30.11.1990. Since the statement of claim was the basis for the preparation of affidavit of the petitioner and his cross examination and all further proceedings, in every proceeding of the record, the date of last working day of the petitioner has been referred to as 30.11.91 instead of 30.11.90. According to the petitioner, he continuously worked with the respondents for six years on muster rolls basis and there is evidence to the effect that he worked upto 30.11.90 after which he was transferred to Sanchore where he reported for duty on 3.12.90 but the Ranger, Sanchore asked him to come on duty

after ten days. When the petitioner went after ten days, he was asked to come on duty after one month and thereafter when he again went there, he was asked to come on duty after 3-4 months. Subsequently he was informed that he has been again transferred back to Bhinmal but when he reported back at Bhinmal, he was informed that no post was available there and was asked to go back to Sanchore.

The respondents have contested the claim of the petitioner before the learned Labour Court in reply to which their basic contention was that the petitioner was never removed from service but he abandoned the services on his own. It was contended that the petitioner worked only upto 30.11.1990 although in different broken spells and thereafter left the job on his own accord. It was denied that petitioner was ever transferred from Bhinmal to Sanchore. The petitioner raised the dispute enormously delayed and the claim of the petitioner was therefore liable to be rejected.

Learned Labour Court upon examination of the evidence and consideration of the arguments of the parties held that the petitioner was not entitled to any relief because if according to him he worked upto 30.11.1991, there was no question of his being

removed from service from 1.12.1990 and there was a variation in the date of termination as given in the terms of reference and the statement of the claim and the affidavit of the workman.

I have heard Mr. Vinod Purohit, learned counsel for the petitioner and Mr. Rameshwar Dave, Dy.Government Advocate for the State.

Learned counsel for the petitioner argued that the learned Tribunal has viewed the entire case from altogether wrong angle and failed to consider the basic facts which could not be dis-proved even by the respondents that the petitioner was initially appointed with the respondents from 16.7.1984 and worked with them upto 30.11.1990. There was no compliance of Section 25-F of the Industrial Disputes Act, 1947(for short "the Act") prior to termination of his services. It was stated that in the statement of claim the date 30.11.1990 has come to be wrongly stated as 30.11.1991 on account of typographical error and this bona fide mistake crept in all subsequent proceedings such as the reply, affidavit and finally award. On the basis of evidence of the parties however it was proved before the Tribunal that taking date of the removal of the petitioner as 1.12.1990 and counting backwards he

had worked for 329 days in a calendar year. The Labour Court therefore committed a serious error of law on the ground of disparity between the date of his removal as given in the terms of reference and the date given in the statement of claim.

Mr. Rameshwar Dave, learned Dy.Government Advocate appearing for the respondents however argued that the award passed by the learned Labour Court did not suffer from any error apparent on the face of record inasmuch as the date 30.10.1991 was not only mentioned in the statement of claim but the same date was again repeated in the affidavit of the workman. There is no case therefore for interference is made out by this Court in its writ jurisdiction.

I have given my thoughtful consideration to the arguments of the learned counsel for the parties and perused the record.

A careful perusal of the award of the learned Labour Court would clearly indicate that it has not considered the claim of the petitioner workman on merits primarily for the reason of disparity between the terms of the reference and the statement of

claim in regard to date of removal of the petitioner. The industrial dispute was referred to the learned Labour Court on the request of the workman and obviously when approached the conciliation officer with the grievance, he gave 30.11.1990 as the date upto which he lastly worked with the respondent. When statement of claim was however filed, this date was mentioned as 30.11.1991. Looking at the signature which the petitioner had made in the present writ petition and the supporting affidavits and also on the statement of claim and affidavit filed before the learned Labour Court, it could be safely inferred that the petitioner is not a man of much education and hardly knows how to sign. Although not much evidence has come on record that how much educated he is but the fact remains that if on the basis of the terms of reference as made to the learned Labour Court, statement of claim was drafted by his advocate on his behalf, the possibility of typographical error cropping up therein cannot be completely ruled out and also once the date 30.11.1991 was mentioned as the date up to which in the statement of claim, this date was found repetition in the subsequent affidavits as also in the award passed on that basis declining to grant relief to the petitioner. It thus appear a bona fide lapse has resulted into spoiling an otherwise arguable case on merits. Without going into the merits of the case however, I must observe that even if it was a case of

typographical error, effort should have been made for getting the typographical error corrected before the learned Labour Court itself. It would be however necessary in the ends of justice to at least have the case examined on merits rather than throwing it away on the ground of disparity between the two dates as aforesaid particularly when evidence available on record is found to be consistent with the terms of reference.

I therefore while remanding the matter to the learned Labour Court for deciding it afresh deem it appropriate to permit the petitioner workman to get the statement of claim corrected and lead evidence and accordingly allowing the management to also file reply to the amended claim and lead evidence. The proceedings before the learned Labour Court should be concluded expeditiously but in no case later than 18 months from the date of receipt of certified copy of the impugned award. The writ petition is accordingly partly allowed.

(MOHAMMAD RAFIQ),J.